

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7991 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

BANAS EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MR PM RAVAL for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/04/99

ORAL JUDGEMENT

1. The first petitioner is a registered public charitable trust and the second petitioner is the managing trustee of the first petitioner- trust. The petitioners submitted an application for recognition of Arts Teachers' Diploma College at Palanpur, to the Director of Higher Education, the respondent no.2 herein

on 29.12.1988. The respondent no.2, on 1.5.1989, rejected the said application vide Annexure-B. The petitioners have challenged the said decision in this petition.

2. Perusing the impugned order, it appears that the application for recognition has been rejected on the ground that a policy decision has been taken not to grant recognition to open new ATD College. It further appears that the policy decision is taken on the ground that the students coming out of such institutions find it difficult to get employment and, therefore, there would be further addition in the educated unemployed persons possessing Arts Teachers' Diploma. When this petition came up for hearing of admission, this Court, after hearing the learned advocates appearing for the respective parties, after issuing Rule, by way of interim order, directed the respondents to consider the application of the petitioners for recognition of college for ATD course on merits as if there is no policy decision not to grant recognition to any ATD College in Banaskantha District and the respondents authorities were also directed to consider the question whether such recognition can be granted if the petitioners waive their claim for grant for a period of two years or any other period. It was further directed that the decision taken by the Government shall be placed on record of this case on or before 15.4.1991. It appears that a communication dated 6.8.1991, under the signature of Section Officer of Education Department, Gandhinagar, was placed on record reiterating the Government decision not to grant recognition to open ATD College. This Court, again on 28.2.1996, directed the respondents to produce the concerned file before this Court for perusal and to keep ready the rules of business, instructions under the Business Rules and the Orders of Delegation to show as to who is the Competent Authority to take decision in the matter. The Additional Chief Secretary, Education Department was directed to file affidavit. Mr.S.D.Sharma, Secretary, Education Department, filed the affidavit-in-reply dated 7.8.1996 to which a rejoinder is also filed by the petitioners. It may be stated that on behalf of the respondent no.1, further affidavit is also filed by the Under Secretary, Education Department, Gandhinagar.

3. The petitioners have challenged the decision of the respondents not to grant recognition to ATD course on the ground of discrimination by invoking Article 14 of the Constitution of India. Mr.H.P.Raval, learned advocate appearing for the petitioners, after inviting my

attention to the relevant averments relating to discrimination, submitted that the respondents have not adopted uniform policy regarding grant of recognition to ATD Colleges and the reason of no need of ATD College is given only as an excuse to refuse the recognition. Mr. Raval further submitted that the respondents refused recognition to the petitioner no.1- Institution in Banaskantha District even though there is no such institution in the entire district of Banaskantha and on the other hand, granted recognition to four ATD Colleges in the same year when the petitioners had applied, in Panchmahals District even though there was already existing ATD College at Lunavada of the said district. In the submission of Mr. Raval, the learned advocate for the petitioners, both the districts are backward areas and, therefore, refusal to grant recognition to the petitioner no.1- Institution is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. The petitioners, in order to substantiate their submissions, have made following averments in para 18(i) to 18(iv) of the petition.

"18.(i): The petitioners state that Rashtriya Kala Maha Vidyalaya, Balasinor approached for recognition of ATD College in the year 1987 and ultimately the recognition was retrospectively granted by order dated 16th November 1988.

(ii): Similarly, Sarvodaya Arts Teachers College at Santrampur in Panchmahal District also applied for recognition for A.T.D.College at Santrampur in the year 1987. The said institution has also been granted retrospective recognition by order dated 16th November 1988.

Both the aforesaid institutions are located in one and the same District of Panchmahals. The petitioners at this stage would like to point out that in Panchmahal District, A.T.D.College was already existing at Lunavada. In spite of these facts, the respondent granted recognition as stated hereinabove.

(iii): Similarly Adarsh Art Teachers Training College, at Bayad in Sabarkantha District applied for recognition of A.T.D.College at Bayad in the year 1987 and the said College has also been granted retrospectively recognition by order dated 16th November 1988.

(iv): Another A.T.D.College named Shakti Krupa Art Teachers Training College also applied for recognition for A.T.D.College in the year 1987 and the said institution was also granted recognition by order dated 22nd December 1988. Hereto annexed and marked Annexure 'I' collectively are the copies of the orders of recognition of the aforesaid institutions."

In reply to these averments, Mr.S.D.Sharma, Secretary, Education Department, in his reply has stated that:

"(d): Institutions situated in Santrampur, Balasinor and Bayad were given Balasinor and Bayad were given educational year 1987-88 by virtue of the order No. UKS-1087-31242-G.1 dated 8.11.1988 of the Education Department keeping in view only the interests of the students studying in the said institutions. Further, the institute situated in Himatnagar was also granted recognition only with a view to protect the interests of the students."

4. Having gone through the reply of the Secretary, Education Department, to the averments made by the petitioners, in my opinion, the respondents have tried to evade to answer keeping in mind the interests of the students. Looking to the averments made by the petitioners, it is clear that the colleges which had applied for recognition for opening ATD course at or around the time when the petitioners approached the respondents with similar request, and which were initially not granted such recognition, the respondents chose not only to grant recognition, but granted it with retrospective effect. It is also clear that even though there is already an existing ATD College at Lunavada in Panchmahals District, recognition was granted to another college at Santrampur in the same district. In view of this, in my opinion, the petitioners are proved to have been discriminated by not treating them on par with other colleges. The respondent no.1 has tried to justify this stand by contending that there are several colleges in Sabarkantha and Mehsana Districts in the vicinity of Palanpur, District: Banaskantha where the college is sought to be located, namely:

- (1)Gayatri ATD College, Pilwai, Taluka Vijapur District: Mehsana.
- (2)The New Progressive ATD College, Mehsana

(3)Adarsh ATD College, Bayad, Dist:Sabarkantha

(4)Manekba Amin College of Fine Arts, Patan

(5)Shaktikrupa ATD College, Himatnagar.

By giving these details, the respondent no.1 has tried to contend that the students from Banaskantha District are easily able to secure admission to these colleges. In my opinion, this reply of the respondent no.1 is neither here nor there. The question is not whether the students can secure admission in colleges located in the nearby vicinity of Banaskantha District. It is the right of the petitioners to get recognition for opening of ATD College provided they fulfil the norms laid down by the State Government. It is not the say of the respondents that the petitioners are not fulfilling the requirement of norms. The only ground on which the recognition is refused is that the Government has taken a policy decision not to grant new recognitions. If at all, a policy decision is taken not to grant any recognition, it must apply to all and there cannot be different standards in applying the policy decision. The petitioners as well as other institutions had applied almost simultaneously for recognition to start ATD colleges and barring the petitioners, others have been granted recognition. This fact itself is sufficient to interfere in the decision taken by respondent no.2 vide Annexure-B.

5. Mr.Sompura, learned AGP appearing for the respondents submitted that out of the total number of students passing out of ATD Colleges of the State, after completion of the course, only 5% of the trainees secure jobs in primary schools and a majority of the students are not in a position to secure appropriate jobs. He, therefore, submitted that the respondents were justified in refusing recognition to the petitioners. Mr.Sompura further submitted that if a new institution is opened, the State Government will have to incur additional expenditure of Rs. 1.20 lacs in the first year and Rs. 60,000/- in the second year due to opening of other classes and, therefore, for every new college so opened, the State Government has to bear the cost of Rs.1.80 lacs per year. He, therefore, submitted that no interference is called for in the matter. If Mr.Sompura's submissions were to be accepted, I am afraid, all the institutions imparting education will have to be closed down in view of the unemployment problem, the country is facing. If the respondents had considered this aspect of the matter, they would not have granted recognition to other colleges. The case of the petitioners, on the contrary, is required to be considered in view of the statement made by them at the time of admission of the petition

that the petitioners are prepared to forego grant-in-aid for a period of two years, if the recognition is granted. Mr.Raval, learned advocate for the petitioners fairly stated that the petitioners will abide by the said statement even today if the recognition is granted to the petitioner no.1- Institution. In view of this, I see no merit in the submissions advanced on behalf of the respondents.

6. In the result, the petition is allowed. The order dated 1.5.1989 at Annexure B passed by the respondent no.2 is hereby quashed and set aside. The respondents are directed to reconsider their decision and to take appropriate decision in the matter of grant of recognition to the petitioner- Institution for opening ATD College. The respondents shall pass appropriate orders within a period of six weeks from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

mhs/-